Re Yong Tet Yin, ex p United Overseas Bank Ltd

HIGH COURT (KOTA KINABALU) — BANKRUPTCY PETITION NO K29(P)-197-1994
TEE AH SING JC
17 OCTOBER 1995

Bankruptcy *— Petition — Validity of creditor's petition — Whether petition properly entitled — Whether petition signed by person duly authorized under seal by the corporation — Bankruptcy Act 1967 ss 131 & 133 — Bankruptcy Rules 1969 rr 99 & 215*

In this bankruptcy proceedings, the judgment debtor raised a preliminary objection as to the validity of the creditor's petition on the grounds: (1) that the bankruptcy petition was entitled and presented to the 'High Court in Borneo' on 6 August 1994 when it should have been entitled and presented in the 'High Court in Sabah and Sarawak' by virtue of the amendment made by s 2 of the Courts of Judicature (Amendment Act) 1994 which came into force on 24 June 1994; and (2) that the petition was signed by an unauthorized person not duly authorized under seal by the corporation. The petitioning creditor objected to the preliminary objection on the grounds that no notice had been given to them within 48 hours and that the issues raised by the judgment debtor had been replied through an affidavit. The petitioning creditor contended that they had complied with the requirement under rr 91 and 99 of the Bankruptcy Rules 1969 in the bankruptcy notice and the creditor's petition.

Held, rejecting the preliminary objection:

(1) The amendment made by s 2 of the Courts of Judicature (Amendment) Act 1994 was only in name; the court named in the bankruptcy petition has the same jurisdiction as the High Court of Sabah and Sarawak at Kota Kinabalu. Furthermore, it was a formal defect or mere irregularity which had caused no substantial injustice to any party and was therefore remediable under s 131 of the Bankruptcy Act 1967.

(2) By virtue of s 30(1) of the Interpretation Act 1948, the bankruptcy petition was proper and valid as it was based on the bankruptcy notice entitled 'In the High Court Borneo' which was dated 16 May 1994, ie before the amendment made by s 2 of the Courts of Judicature Act 1994 came into force.

(3) The creditor's petition was validly signed and authorized and it conformed with r 215 of the Bankruptcy Rules 1969. It was clear from the petition that it was presented by the judgment creditor and signed by the manager and attorney of the judgment creditor.

A [**Bahasa Malaysia summary**

Dalam prosiding kebankrapan ini, penghutang penghakiman menimbulkan bantahan permulaan di atas kesahihan petisyen pemiutang atas alasan: (1) bahawa petisyen kebankrapan telah diberi tajuk dan dikemukakan kepada Mahkamah Tinggi di Borneo B pada 6 Ogos 1994 apabila ia sepatutnya diberi tajuk dan dikemukakan di 'Mahkamah Tinggi di Sabah dan Sarawak' memandangkan pindaan yang dibuat oleh s 2 Akta Mahkamah Kehakiman (Pindaan) 1994 yang berkuatkuasa pada 24 Jun 1994; dan (2) bahawa petisyen itu ditandatangani oleh orang yang tidak mempunyai kuasa yang tidak diberi kuasa sepenuhnya di bawah C meterai oleh badan itu. Pemiutang mempetisyen membantah kepada bantahan permulaan itu atas alasan bahawa tiada notis diberikan kepada mereka dalam masa 48 jam dan bahawa isu yang ditimbulkan oleh penghutang penghakiman telahpun dijawab melalui afidavit. Pemiutang mempetisyen menegaskan bahawa mereka telah mematuhi kehendak-kehendak di bawah kk 91 dan D 92 Kaedah-Kaedah Kebankrapan 1969 dalam notis kebankrapan dan petisyen pemiutang.

Diputuskan, menolak bantahan permulaan:

E (1) Pindaan yang dibuat oleh s 2 Akta Mahkamah Kehakiman (Pindaan) 1994 hanyalah terhadap nama; mahkamah yang dinamakan dalam petisyen kebankrapan mempunyai bidang kuasa yang sama seperti Mahkamah Tinggi Sabah dan Sarawak di Kota Kinabalu. Tambahan pula, ia adalah kecacatan formal atau hanya luar aturan yang tidak menyebabkan ketidakadilan F yang besar kepada mana-mana pihak dan oleh itu boleh dipulihkan di bawah s 131 Akta Kebankrapan 1967.

(2) Memandangkan kepada s 30(1) Akta Tafsiran 1948, petisyen kebankrapan itu adalah wajar dan sah kerana ia berdasarkan kepada notis kebankrapan yang diberi tajuk 'Dalam Mahkamah G Tinggi Borneo' yang bertarikh 16 Mei 1994, iaitu sebelum pindaan yang dibuat oleh s 2 terhadap Akta Mahkamah Kehakiman 1964 berkuatkuasa.

(3) Petisyen pemiutang telah ditandatangani dan diberikuasa dengan sah dan ia mengikut k 215 Kaedah-Kaedah Kebankrapan 1969. Adalah jelas daripada petisyen itu bahawa ia dikemukakan oleh H pemiutang penghakiman dan ditandatangani oleh pengurus dan wakil pemiutang penghakiman.]

Notes

For cases on creditor's petition, see 1 *Mallal's Digest* (4th Ed, I 1995 Reissue) paras 1297–1302; [1994] *Mallal's Digest* 121.

Case referred to

Rengasamy Pillai v Comptroller of Income Tax [1970] 1 MLJ 233 (refd)

Legislation referred to

Bankruptcy Act 1967 ss 131, 133
Bankruptcy Rules 1969 rr 91, 99, 215
Courts of Judicature Act 1964 s 3
Courts of Judicature (Amendment) Act 1994 s 2
Interpretation Act 1948

Ram Singh (*Shelley Yap Leong Tseu Chong Chia & Co*) for the judgment creditor.

Gabriel Ho (*Gabriel Ho & Co*) for the judgment debtor.

Shamzulzaman for the Official Assignee.

Cur Adv Vult

Tee Ah Sing JC: In this bankruptcy proceeding the learned counsel for the judgment debtor raised a preliminary objection as to whether there is in fact a valid creditor's petition before the court on two grounds. Firstly, the bankruptcy petition No K 29(P) 197/94 was entitled and presented in the High Court in Borneo on 6 August 94. As at the material time there was no longer any High Court in Malaysia known as the High Court in Borneo. Secondly, Wong Chee Kiong had no authority to sign on behalf of Overseas Union Bank Ltd. He referred to para 4 of Wong Chee Kiong's affidavit affirmed on 12 September 95.

The learned counsel for the petitioning creditor objected to the preliminary objection as no notice was given to them within 48 hours. Secondly, the issues raised by the learned counsel for the judgment debtor has been replied in the affidavit of Wong Chee Kiong.

Further the petitioning creditor has complied with the requirement under rr 91 and 99 of the Bankruptcy Rules 1969 ('the Rules') on the forms in the bankruptcy notice and the creditor's petition.

I shall deal with the first ground of preliminary objection. Section 2 of the Courts of Judicature (Amendment) Act 1994 amended s 3 of the Courts of Judicature Act 1964 in the definition of 'High Court', by substituting for the word 'Borneo' the words 'Sabah and Sarawak'. The amendment came into force on 24 June 94.

The bankruptcy notice is intituled 'In the High Court Borneo at Kota Kinabalu. In Bankruptcy No K 29(N) 249 of 1994'. This was 16 May 1994.

The said bankruptcy notice was issued before the amendment to the 'High Court in Borneo'. As such I am of the view that the said bankruptcy notice was validly issued by the court.

The creditor's petition is intituled 'In the High Court In Borneo At Kota Kinabalu. Bankruptcy No K 29(N) – 249 of 1994. Bankruptcy Petition No K 29(P) – 197 of 1994.'

The creditor's petition is dated 27 July 1994 and was presented to the court on 6 August 1994.

When this creditor's petition was presented to the court on 6 August 1994 the 'High Court in Borneo' has been amended to the 'High Court in Sabah and Sarawak'.

I am of the view that the amendment is only a change in name from the 'High Court in Borneo at Kota Kinabalu, to the 'High Court in Sabah and Sarawak at Kota Kinabalu'.

It is the same High Court at Kota Kinabalu that has jurisdiction.

Further, I am of the view that this is a formal defect or mere irregularity and not in substance which is remediable under s 131 of the Bankruptcy Act 1967 as no substantial injustice has been caused by it (see *Rengasamy Pillai v Comptroller of Income Tax* [1970] 1 MLJ 233).

Furthermore s 30(1) of the Interpretation Act 1948 and 1967 (Consolidated and Revised – 1989) provides as follows:

> 30 Matters not affected by repeal.
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> (1) The repeal of a written law in whole or in part shall not—
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> (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder; or
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> (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
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> (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
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> (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
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> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made.

By virtue of this provision I am of the view that the bankruptcy petition intituled 'In the High Court Borneo at Kota Kinabalu' is proper and valid as it is based on the bankruptcy notice filled before the amendment; and the said bankruptcy notice is intituled 'In the High Court Borneo at Kota Kinabalu'.

In other words under this provision any proceeding in the title of the 'High Court Borneo at Kota Kinabalu' can still be proceeded with provided that the conditions stated therein are satisfied.

I thus reject the first ground of objection as being without any merits.

I shall now deal with the second ground of objection.

The material parts of the creditor's petition reads as follows:

> We, United Overseas Bank Ltd ... By Wong Chee Kiong duly authorised under a Power of Attorney dated 10.4.91 to sign and present this petition, hereby petition the court that a Receiving Order and Adjudication order be made in respect of Yong Tet Yin ...

And at page 2 of the petition it reads as follows:

> United Overseas Bank Ltd by its Attorney Wong Chee Kiong to sign and present this petition.

The relevant part of the affidavit of truth of statement in petition is as follows: A

> I, Wong Chee Kiong ..., the Branch Manager of United Overseas Bank Ltd, the petitioners named in the petition ... affirm and say as follows:
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> 1. That I am the Branch Manager of United Overseas Bank Ltd and am duly authorised by virtue of a Power of Attorney dated the 10th April 1991 to sign and present the said petition and to make this Affidavit. B

The creditor's petition is presented by Wong Chee Kiong, the Attorney of the judgment creditor and who also affirmed the truth of the statements in the petition. In the affidavit of truth of statement in petition Wong Chee Kiong was described as the manager and attorney C of the judgment creditor.

Rule 215 of the Rules provides as follows:

> Where a corporation presents a petition or takes any other action under this Act, this officer of the corporation may act in his own name, stating that he is such officer duly authorised under seal; but a petition may be D presented by the corporation and signed by the officer on its behalf. Any person chosen by the corporation, to act for it as agent, is an 'officer' within section 133, and if duly authorised under seal can act for the corporation.

The relevant part of s 133 of the Bankruptcy Act 1967 reads as follows: E

> For all or any of the purposes of this Act—
>
> (a) a corporation may act by any of its officers authorized in that behalf under the seal of the corporation.

From the petition it is clear that it is presented by the judgment creditor, a corporate body, and signed by Wong Chee Kiong, the F manager and attorney of the judgment creditor. Thus the petition is presented under the second limb of r 215 of the Rules.

The creditors' petition was filed in compliance with Rule 99 of the Rules and the form No 9.

On the face of the creditors' petition and the affidavit of truth of G statement in the petition it would appear that Wong Chee Kiong has authority to sign and present the petition.

I therefore reject the second ground of preliminary objection.

In deciding the preliminary objection I am of the view that the affidavits filed by the respective parties should not be looked into. H

In view of the foregoing I dismiss the preliminary objection. The hearing of this application must proceed on its merits.

Order accordingly.

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Reported by Zahid Taib